

(J) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the futures, options, or swaps that would be commingled;

(K) A discussion of the procedures that the derivatives clearing organization would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled futures, options, or swaps in the account; and

(L) A description of the arrangements for obtaining daily position data with respect to futures, options, and swaps in the account.

(ii) *Futures account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options, and swaps, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the Act, the derivatives clearing organization shall file with the Commission a petition for an order pursuant to section 4d(a) of the Act. Such petition shall include, at a minimum, the information required under paragraph (b)(2)(i) of this section.

(iii) *Commission action.* (A) The Commission may request additional information in support of a rule submission filed under paragraph (b)(2)(i) of this section, and may grant approval of such rules in accordance with § 40.5 of this chapter.

(B) The Commission may request additional information in support of a petition filed under paragraph (b)(2)(ii) of this section, and may issue an order under section 4d of the Act in its discretion.

(c) *Holding of funds and assets.* A derivatives clearing organization shall hold funds and assets belonging to clearing members and their customers in a manner which minimizes the risk of loss or of delay in the access by the derivatives clearing organization to such funds and assets.

(d) *Transfer of customer positions.* A derivatives clearing organization shall have rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions and

related funds at the same time from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions:

(1) The customer has instructed the carrying clearing member to make the transfer;

(2) The customer is not currently in default to the carrying clearing member;

(3) The transferred positions will have appropriate margin at the receiving clearing member;

(4) Any remaining positions will have appropriate margin at the carrying clearing member; and

(5) The receiving clearing member has consented to the transfer.

(e) *Permitted investments.* Funds and assets belonging to clearing members and their customers that are invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks. Any investment of customer funds or assets by a derivatives clearing organization shall comply with § 1.25 of this chapter, as if all such funds and assets comprise customer funds subject to segregation pursuant to section 4d(a) of the Act and Commission regulations thereunder.

§ 39.16 Default rules and procedures.

(a) *General.* A derivatives clearing organization shall adopt rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the derivatives clearing organization.

(b) *Default management plan.* A derivatives clearing organization shall maintain a current written default management plan that delineates the roles and responsibilities of its board of directors, its risk management committee, any other committee that a derivatives clearing organization may have that has responsibilities for default management, and the derivatives clearing organization's management, in addressing a default, including any

necessary coordination with, or notification of, other entities and regulators. Such plan shall address any differences in procedures with respect to highly liquid products and less liquid products. A derivatives clearing organization shall conduct and document a test of its default management plan at least on an annual basis.

(c) *Default procedures.* (1) A derivatives clearing organization shall adopt procedures that would permit the derivatives clearing organization to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the derivatives clearing organization.

(2) A derivatives clearing organization shall adopt rules that set forth its default procedures, including:

(i) The derivatives clearing organization's definition of a default;

(ii) The actions that the derivatives clearing organization may take upon a default, which shall include the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable, and which may include, in the discretion of the derivatives clearing organization, the auctioning or allocation of such positions to other clearing members;

(iii) Any obligations that the derivatives clearing organization imposes on its clearing members to participate in auctions, or to accept allocations, of the customer or house positions of the defaulting clearing member, *provided that:*

(A) The derivatives clearing organization shall permit a clearing member to outsource to a qualified third party, authority to act in the clearing member's place in any auction, subject to appropriate safeguards imposed by the derivatives clearing organization;

(B) The derivatives clearing organization shall permit a clearing member to outsource to a qualified third party, authority to act in the clearing member's place in any allocations, subject to appropriate safeguards imposed by the derivatives clearing organization; and

(C) Any allocation shall be proportional to the size of the participating

or accepting clearing member's positions in the same product class at the derivatives clearing organization;

(iv) The sequence in which the funds and assets of the defaulting clearing member and its customers and the financial resources maintained by the derivatives clearing organization would be applied in the event of a default;

(v) A provision that the funds and assets of a defaulting clearing member's customers shall not be applied to cover losses with respect to a house default;

(vi) A provision that the excess house funds and assets of a defaulting clearing member shall be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall; and

(3) A derivatives clearing organization shall make its default rules publicly available as provided in § 39.21 of this part.

(d) *Insolvency of a clearing member.*

(1) A derivatives clearing organization shall adopt rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent;

(2) No later than upon receipt of such notice, a derivatives clearing organization shall review the continuing eligibility of the clearing member for clearing membership; and

(3) No later than upon receipt of such notice, a derivatives clearing organization shall take any appropriate action, in its discretion, with respect to such clearing member or its house or customer positions, including but not limited to liquidation or transfer of positions, suspension, or revocation of clearing membership.

§ 39.17 Rule enforcement.

(a) *General.* Each derivatives clearing organization shall:

(1) Maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization and the resolution of disputes;

(2) Have the authority and ability to discipline, limit, suspend, or terminate